

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 449 OF 2022

Shri Manish s/o Namdeorao Bawankar

..VS..

Sau. Sharayu w/o Manish Bawankar

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri P.P. Pendke, Advocate for the petitioner.

CORAM : ROHIT B. DEO, J.

DATED : 08/02/2022.

Hearing was conducted through Video Conferencing.

2. The petitioner – husband is assailing an order of the Family Court whereby discretion under proviso to Section 14(1) of the Hindu Marriage Act, 1955 (the Act) is exercised and the respondent-wife is permitted to present the petition for divorce before the period of one year.

3. Section 14 of the Act reads thus :

“14. No petition for divorce to be presented within one year of marriage. -

(1) Notwithstanding anything contained in this Act, it shall not be competent for any Court to entertain any petition for dissolution of a marriage by a decree of divorce, [unless at the date of the presentation of the petition one year has elapsed] since the date of the marriage:

Provided that the court may, upon application made to it in accordance with such rules as may be made by the High Court in that behalf, allow a petition to be presented [before one year has elapsed] since the date of the marriage on the ground that the case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent, but, if it

appears to the Court at the hearing of the petition that the petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the Court may, if it pronounces a decree, do so subject to the condition that the decree shall not have effect until after the [expiry of one year] from the date of the marriage or may dismiss the petition without prejudice to any petition which may be brought after the [expiration of the said one year] upon the same or substantially the same facts as those alleged in support of the petition so dismissed.

(2) In disposing of any application under this section for leave to present a petition for divorce before the [expiration of one year] from the date of the marriage, the court shall have regard to the interests of any children of the marriage and to the question whether there is a reasonable probability of a reconciliation between the parties before the expiration of the [said one year].”

4. This Court indicated to the learned Counsel for the petitioner Mr. P.P. Pendke that even at the stage of final hearing of the petition, if the Court finds that leave to present the petition is obtained by misrepresentation or concealment, the Court is not powerless and the petition itself may be dismissed.

5. At this stage, learned Counsel for the petitioner Mr. P.P. Pendke seeks leave to withdraw the petition with liberty to argue all contentions at an appropriate stage.

6. The petition is disposed of as withdrawn with liberty reserved to seek adjudication on the contentions raised, at an appropriate stage.